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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN ANTHONY GURULE, JR.,

Defendant and Appellant.

E073116

(Super.Ct.No. FVI19000151)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cara D. Hutson,
Judge. Dismissed.

Tasha G. Timbadia, under appointment by the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Heather
B. Arambarri, Deputy Attorneys General, for Plaintiff and Respondent.

Steven Anthony Gurule, Jr., pleaded no contest to vandalism causing over \$400 in damage and attempted second degree burglary of a vehicle. As part of his sentence, the trial court imposed certain fines and fees.

On appeal, Gurule argues the trial court erred by imposing certain fines and fees without determining Gurule had the ability to pay them. We dismiss the appeal.

I

FACTS

On January 31, 2019, the San Bernardino County District Attorney charged Gurule with vandalism causing more than \$400 in damage (Pen. Code, § 594, subd. (a), unlabeled statutory citations refer to this code) and attempted second degree burglary of a vehicle (§§ 664, 459). On February 8, 2019, Gurule pleaded no contest to both charges.

The trial court imposed and suspended a total aggregate term of three years four months and ordered Gurule to serve three years two months on mandatory supervision. The trial court also imposed certain fines and fees, including a mandatory \$300 restitution fine and a probation revocation fine in the same amount. The court stayed the probation revocation fine.

On June 14, 2019, the trial court revoked Gurule's mandatory supervision and ordered Gurule to serve the stayed sentence. It imposed another \$300 restitution fine and the previously stayed \$300 probation revocation fine. Gurule didn't object to these fines in the trial court.

Gurule timely appealed the trial court’s judgment finding him in violation of probation.

II

ANALYSIS

Gurule argues the trial court erred by imposing the \$300 restitution fine and \$300 probation revocation fine without determining whether he had the ability to pay them. In particular, he points to *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*) which held “imposing such fines is constitutional only if the court has made a finding that the defendant has the ability to pay.” The People don’t argue the merits, only that section 1237.2 bars his appeal.¹

“An appeal may not be taken by the defendant from a judgment of conviction on the ground of an error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction in the trial court.” (§ 1237.2.)

The plain language therefore bars Gurule’s appeal. Though a defendant may raise an error in the imposition or calculation of fines, penalty assessments, fees, or costs for

¹ The People also argue Gurule forfeited this issue by failing to raise it on appeal. We don’t reach that issue, however, because we find section 1237.2 bars the appeal.

the first time on appeal so long as they raise at least one other issue, Gurule’s sole claim on appeal is that the court erred by failing to determine whether he had the ability to pay the fines and fees imposed. (*People v. Jordan* (2018) 21 Cal.App.5th 1136, 1141.) Since he failed to raise the issue in the trial court, it follows that section 1237.2 bars his appeal. (*Id.* at p. 1140.)

Gurule argues section 1237.2 doesn’t apply here, because failing to determine his ability to pay is constitutional, not ministerial. Our colleagues in the Second District Court of Appeal, the same district which decided *Dueñas*, have already considered and rejected this argument. In *People v. Hall* (2019) 39 Cal.App.5th 502 (*Hall*), a division of that court concluded “[t]he plain language of the statute ‘does not limit [its] reach only to situations where the fee simply did not apply at all or was a result of mathematical error.’” (*Id.* at p. 504.) Instead, “[s]ection 1237.2 applies any time a defendant claims the trial court wrongly imposed fines, penalty assessments, surcharges, fees, or costs without having first presented the claim in the trial court,” including where the claimed error is a failure to hold an ability to pay hearing as required by *Dueñas*. (*Hall, supra*, 39 Cal.App.5th at p. 504.)

We agree with our colleagues in *Hall* and find Gurule’s “appeal is not cognizable under section 1237.2.” (*Hall, supra*, 39 Cal.App.5th at p. 504.)

III

DISPOSITION

We dismiss the appeal.

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SLOUGH
J.

We concur:

MILLER
Acting P. J.

RAPHAEL
J.